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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 190729-0006]

RIN 0648-XG657

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish

Fisheries; Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS revises *Illex* squid specifications and maintains previously approved longfin squid and butterfish specifications for the 2019 fishing year. This action is necessary to specify catch levels for the *Illex* squid fishery based on updated information on allowable catch levels and to provide notice that NMFS is maintaining the previously approved longfin squid and butterfish specifications. These specifications are intended to promote the sustainable utilization and conservation of the squid and butterfish resources.

DATES: Effective August 1, 2019.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA), the Supplemental Information Report (SIR), the Regulatory Impact Review (RIR), and the Regulatory Flexibility Act (RFA) analysis are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery

Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674-2331. The EA/RIR/RFA analysis is also accessible via the Internet at www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0135.

FOR FURTHER INFORMATION CONTACT: Douglas Christel, Fishery Policy Analyst, (978) 281-9141, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require the Mid-Atlantic Fishery Management Council's Atlantic Mackerel, Squid, and Butterfish Monitoring Committee to develop specification recommendations for each species based upon the acceptable biological catch (ABC) advice of the Council's Scientific and Statistical Committee (SSC). The FMP regulations also require the specification of annual catch limits (ACL) and accountability measure (AM) provisions for butterfish. Both squid species are exempt from the ACL/AM requirements because they have a life cycle of less than one year. In addition, the regulations require the specification of domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign fishing (TALFF), joint venture processing (JVP), commercial and recreational annual catch targets (ACT), the butterfish mortality cap in the longfin squid fishery, and initial optimum yield (IOY) for both squid species.

On May 1, 2019 (84 FR 18471), we published a proposed rule in the **Federal Register** seeking public comment on revising the previously approved 2019 *Illex* squid specifications and maintaining the longfin squid and butterfish specifications. The proposed rule for this action

included additional background on specifications and the details of how the Council derived its recommended specifications for *Illex* and longfin squid and butterfish. Those details are not repeated here. For additional information, please refer to the proposed rule for this action.

This action does not consider revisions to existing specifications for Atlantic mackerel. On August 13, 2018, the Council approved Framework Adjustment 13 to the FMP, which included 2019 specifications for the Atlantic mackerel fishery. On June 7, 2019, we published a separate proposed rule in the **Federal Register** (84 FR 26634) to solicit public input on that action. Until new specifications are implemented, the existing Atlantic mackerel, *Illex* squid, longfin squid, and butterfish specifications will continue pursuant to 50 CFR 648.22(d)(1).

At its June 2019 meeting, the Council considered SSC input and updated data on the status of each species managed by the FMP as part of its annual specifications review. For fishing year 2020, the Council recommended maintaining the 2019 squid and butterfish specifications implemented by this final rule and the 2019 Atlantic mackerel specifications proposed under Framework Adjustment 13. We will publish a separate rule consistent with the Administrative Procedure Act (APA) to implement the final 2020 specifications for these species.

2019 Longfin Squid Specifications

This action maintains the existing longfin squid ABC of 23,400 mt for 2019, as implemented on March 1, 2018 (83 FR 8764). The IOY, DAH, and DAP are calculated by deducting an estimated discard rate (2.0 percent) from the ABC, resulting in a 2019 IOY, DAH, and DAP of 22,932 mt (Table 1). This action also maintains the existing allocation of longfin squid DAH among trimesters according to percentages specified in the FMP (Table 2). The

Council will review these specifications during its annual specifications process following annual data updates each spring, and may change its recommendation for 2020 if new information is available.

Table 1 – 2019 Longfin Squid Specifications in metric tons (mt)

OFL	Unknown
ABC	23,400
IOY	22,932
DAH/DAP	22,932

Table 2 – 2019 Longfin Quota Trimester Allocations

Trimester	Percent	Allocation (mt)
I (Jan-Apr)	43	9,861
II (May-Aug)	17	3,898
III (Sep-Dec)	40	9,173

2019 Butterfish Specifications

This action maintains the previously approved 2019 butterfish specifications outlined in Table 3, as implemented on March 1, 2018 (83 FR 8764). This action also maintains the existing butterfish mortality cap in the longfin squid fishery (3,884 mt) and the existing allocation of the butterfish mortality cap among longfin squid trimesters (Table 4).

Table 3 – 2019 Butterfish Specifications in Metric Tons (mt)

OFL	37,637
ACL = ABC	27,108
Commercial ACT (ABC - management uncertainty buffers for each year)	25,075
DAH (ACT minus butterfish cap and discards)	20,061
Directed Fishery closure limit (DAH - 1,000 mt incidental landings buffer)	19,061
Butterfish Cap (in the longfin squid fishery)	3,884

Table 4 – Trimester Allocation of Butterfish Mortality Cap on the 2019 Longfin Squid Fishery

Trimester	Percent	Allocation (mt)
I (Jan-Apr)	43	1,670
II (May-Aug)	17	660
III (Sep-Dec)	40	1,554
Total	100	3,884

Final 2019 *Illex* Squid Specifications

Consistent with the Council's recommendation, this action increases the 2019 *Illex* ABC from 24,000 mt to 26,000 mt. The ABC is reduced by the previously calculated discard rate (4.52 percent), which results in a 2019 IOY, DAH, and DAP of 24,825 mt (Table 5), an increase of 8 percent compared to 2018 levels (22,915 mt).

Table 5 – 2019 *Illex* Squid Specifications in metric tons (mt)

OFL	Unknown
ABC	26,000
IOY	24,825
DAH/DAP	24,825

Comments and Responses

NMFS received three comments in response to the proposed rule for this action from commercial fishing industry groups. All comments supported all of the proposed measures, including the rationale used by the SSC to support the proposed *Illex* squid ABC increase. We agree, and have approved the proposed measures for implementation through this final rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to make this rule effective immediately

upon filing with the Office of the Federal Register. As noted in the proposed rule for this action, the Council did not adopt final recommendations for 2019 squid and butterfish specifications until its October 2019 meeting, submitting the preliminary supporting analysis in December 2019. Due to the government shutdown in early January 2019, NMFS could not work on the development and review of the necessary analysis and rulemaking for the 2019 squid and butterfish specifications. Although NMFS began working on the action as soon as possible upon reopening of the government, the backlog of work prevented the proposed rule from being published until May 1, 2019. As a result, the final rule could not be published until the *Illex* squid fishery was well underway in 2019.

The current *Illex* squid ABC is set at 24,000 mt and would likely result in the early closure of the fishery based on catch rates in recent years. To date, the 2019 fishery is catching *Illex* squid at a rate similar to 2018 when the fishery was closed on August 14, 2018, after catching the available quota under a 24,000 mt ABC. A 30-day delayed effectiveness would increase the likelihood that the fishery would close prematurely based on the 24,000 mt ABC that will be replaced by this final rule. A premature closure under the existing lower ABC would obligate us to reopen the fishery under the increased higher ABC once this action becomes effective. A premature closure and subsequent reopening would disrupt the fishery and minimize potential benefits of the increased ABC if *Illex* squid are no longer available to the fishery. The 2,000-mt increase in the 2019 *Illex* squid ABC implemented by this action reduces the likelihood of a premature fishery closure and provides additional fishing opportunities for fishery participants, which may result in up to an additional \$2 million in revenue to fishing vessels and associated communities. Because the *Illex* squid fishery mostly occurs during the summer, this increase enables the fishery to better achieve optimum yield and benefit from

additional fishing opportunities and revenue while *Illex* squid are available to the fishery. As noted above, the SSC concluded that previous landings of up to 26,000 mt has not resulted in harm to the stock and would not likely result in overfishing. An unnecessary delay in implementing this increase would forgo such benefits to affected entities without any conservation benefits to the stock. Therefore, it is in the public interest to implement this final action and associated increase in the 2019 *Illex* squid ABC as soon as possible to avoid an unnecessary closure of the *Illex* squid fishery, achieve optimum yield in the fishery, and maximize benefits to fishery participants.

This final rule is exempt from review under E.O. 12866. This final rule is not an Executive Order 13771 regulatory action because this final rule is exempt from E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification and no other information has been obtained that suggests any other conclusion. As a result, a regulatory flexibility analysis was not required and none was prepared.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 29, 2019.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.